1944 *Present:* **Howard C.J. and Jayetileke J.**

OPALGALLA TEA AND RUBBER ESTATES, LTD.,
Appellant, *and* HUSSAIN, Respondent.

298—D. C. Kandy, 682.

Principal and agent—Admission of title by agent—Not binding without authority—Admission of letters without proof—Objection in appeal—Evidence Ordinance (Cap. 11), s. 47, Civil Procedure Code (Cap. 86), s. 157.

The Superintendent of an estate is not entitled to make admissions with regard to the proprietor's title unless he is especially authorised to do so or unless his duties as Superintendent by implication include such authority.

Where certain letters were admitted without legal proof by the District Court without any objection being raised by the opposite party, it is not open to such party to object to their reception in appeal.

APPEAL from a judgment of the District Judge of Kandy.

H. V. Perera, K.C. (with him *N. K. Choksy* and *R. A. Kannangara*), for the defendant, appellant.

N. E. Weerasooria, K.C. (with him *S. R. Wijayatilake* and *N. Ameer*), for the plaintiff, respondent.

Cur. adv. vult.

May 17, 1944. HOWARD C.J.—

The defendants appeal from a judgment of the District Judge, Kandy, declaring the plaintiff entitled to certain lands and premises claimed by him in his plaint. The plaintiff based his claim on deeds commencing from March 5, 1897, by virtue of which the lands in question were transferred to one Assen Meedin. The ownership of Assen Meedin is clearly established. On Assen Meedin's death, letters of administration were issued on July 31, 1900, to his widow Asia Umma. On Asia Umma's death the lands in question devolved on her son Meera Saibo who subsequently transferred them to one Mohammedu Abdul Cader. The latter by a deed (P 20) dated December 16, 1941, transferred them to the plaintiff. In their answer the defendant Company asserted that, by a deed of May 23, 1906, one Abdul Cader, the brother of Assen Meedin, sold the lands in dispute to one Abdul Rahiman, who by a further deed dated June 2, 1906, conveyed them to one F. H. La Roche. La Roche by deed dated May 30, 1912, conveyed the said lands to the defendant Company. The defendant Company also stated that they bought the said lands along with other lands from the Crown on a grant by the latter dated July 31, 1914. The defendant Company also further maintained that they had planted the said lands with tea and had possessed the same for over ten years and thereby acquired a prescriptive title thereto.

The learned Judge in finding in favour of the plaintiff came to the following conclusions:—

(*a*) The deed by which Abdul Cader purported to convey the lands to Abdul Rahiman clearly established that he had no title to the lands and was fraudulent inasmuch as the title was in Meera Saibo whereas Abdul Cader purported to deal with them as his own: Hence the defendant Company's title, in so far as it is based on that of Abdul Cader, cannot be sustained.

(*b*) The planting of the lands was commenced in the year 1901 or thereabouts and in 1914 the Crown by grant conferred title on the said defendant Company. Such grant did not, however, have the effect of wiping out the title of the plaintiff. Moreover it was established by document P 14 and P 15 that the defendant Company was in possession by virtue of an informal lease for 25 years from 1906 which to ally all troubles was obtained from Asia Umma. The Crown grant must be deemel to have been obtained by the Company for the benefit of their lessor.

(*c*) The defendant Company's possession until 1939, based as it was on an informal lease, was not adverse to the true owner, the plaintiff's predecessor in title, Mohammadu Abdul Cader.

In these circumstances the defendant Company had not acquired title by prescription.

I do not think the learned Judge's conclusions so far as they are summarised in (*a*) can be contested. With regard to the conclusions at (*b*) I also agree that the plaintiff's title was not wiped out by the Crown Grant of 1914. The Crown Grant (D 6) describes the premises transferred

as an allotment of land called Palatenna estate. It is not described as " chena " or waste land. Nor is there proof that it was such land. In these cirumstances there is no presumption that the previous title was in the Crown—*Perera v. Silva*[1]. In regard to the finding against the defendant Company on the issue of prescription the learned Judge has stated in his judgment that, if it was not for the difficulties created by the documents P 14 and P 15, which are letters written in 1927 by Mr. Wills, the then Manager of the Company, there would be little difficulty in holding that at least since 1906 the lands have been in the possession of La Roche and the defendant Company adversely to the plaintiff and his predecessors in title. The learned Judge then proceeds to hold that the two letters P 14 and P 15 clearly establish an informal lease for 25 years from 1906. The only questions for consideration are whether the learned Judge was correct in coming to this conclusion and, if not, whether the defendant Company have established their rights to the said lands by prescription. P 15 is dated December 11, 1927, and is addressed to M. Chelvatamby, Esq., Proctor, Matale, and purports to be signed by Mr. Wills. The writer states that Mohammadu Abdul Cader has purchased the lands in dispute, the description and dimensions of which are set out in detail, from Meera Saibo, but he (the writer) has taken a lease for 25 years from Asia Umma, the mother of Meera Saibo, to cultivate the said lands and to leave them for the owner after 25 years. The writer also states that Meera Saibo has shown him the deeds of transfer and he will quit the lands after the lease expires in 1931 according to the terms of the informal writing taken from Asia Umma. P 14 is dated December 23, 1927, is addressed to Mohammadu Abdul Cader and purports to be signed by Mr. Wills. It refers to the amicable arrangement with regard to the lease and reiterates the promise to give possession in the year 1931 and to pay damages in the event of failure to do so. Mr. Perera, on behalf of the defendant Company, has maintained that the two letters have not been proved to be in the handwriting of Mr. Wills and cannot, therefore, be accepted in evidence in support of the case put forward by the plaintiff. The letters were produced by the plaintiff when he gave evidence. He further states that they were handed to him by Mohammadu Abdul Cader when he purchased the property. Mohammadu Abdul Cader, according to the plaintiff, died about six months before the hearing of the case. The plaintiff is not in a position to prove Mr. Wills' handwriting. Mr. Grogan, the present Superintendent of the Group, of which the defendant Company forms part and who gave evidence for the latter, was asked in cross-examination about the signatures on P 14 and P 15. In reply to these questions he stated that the signatures on the two letters looked very like the signature of Mr. Wills. Close scrutiny of the letters indicates that they have been written by a person who was unfamiliar with the English language. It does not of necessity follow from this fact that they were not signed by Mr. Wills and represented his views. At the same time it is quite clear that legal proof that the letters were signed by Mr. Wills was not adduced. In spite of the absence of legal proof the letters were accepted by the learned Judge without objection being raised on behalf

[1] *7 C. W. R. 135.*

of the defendant Company. In these circumstances Mr. Weerasooria contends that objection in this Court cannot be taken to their reception. I am satisfied that this contention is correct. Section 47 of the Evidence Ordinance (Cap. 11) is worded as follows:—

> " When the Court has to form an opinion as to the persons by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact."

No objection having been raised by Counsel for the defendant Company to the admission of the two letters, it cannot be said that the Court has to form an opinion as to the persons by whom " the letters were written ". Moreover section 157 of the Civil Procedure Code (Cap. 86) states as follows:—

> " It is the duty of the Court, in the event of a witness professing to be able to recognise or identify writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it."

It seems to me that the defendant Company admitted the letters in the lower Court. In this connection I would also refer to the judgment of Pereira J., in *Silva v. Kindersley*[1]. There is, however, a further objection to these documents being received in support of the alleged informal lease. No doubt they do amount to an admission by Wills of a lease. According to Wills the lease dates from 1906, six years before the defendant Company obtained their title deed from La Roche. The letters do not make it clear whether Wills in writing them was acting in a personal capacity or on behalf of the defendant Company. No doubt if he was speaking for himself the letters would amount to an admission so far as he was concerned. The plaintiff, however, has throughout the case taken up the position that Wills in these letters was writing as the Agent of the defendant Company. There is no evidence that he was specifically authorised by the Company to make any such admissions, or that his duties as Manager or Superintendent by implication included such authority. The question as to whether an agent of a landowner is authorised to make admissions with regard to the latter's title was considered in the case of *Ley v. Peter*[2]. In the couse of his judgment, on page 407, Bramwell B., with whom the majority of the other Judges agreed, stated as follows:—

> " Upon these facts I am of opinion that no evidence was given to prove Peter's authority to Newton to write this letter. No express authority was proved; no evidence given that the defendant ever heard of, or had any knowledge, or ever acted upon or recognised this letter. Then, was there anything to show that writing this letter by Newton was within the general scope of his authority? Newton was an outside agent, and received the rent for the defendant; and received rents at the manor court, and paid the expenses of the defendant there. There is certainly no authority in a receiver of rents to make admissions. Throughout the country landowners are in the habit of employing estate agents and others to receive their rents, and to conduct such

[1] *18 N. L. R. 85.*

[2] *157 E. R. 403.*

farming operations as repairing, draining, cutting timber and the like; but such an employment would not enable that agent without express authority to make admissions in writing or otherwise as to his employer's title, or to bind him by proposals to purchase, or take on lease, the lands of another. To hold otherwise would be to place landowners at the mercy of their receivers or farm agents. Even an attorney employed in a matter of business is not an agent to make admissions for his client except after action commenced and in matters relating to that action—*Wagstaff v. Watson*[1]. And as to Newton, negotiating respecting some right of turbary on behalf of the defendant it is impossible to say that this would authorise him at any future time to make statements as to title, or to make an offer for the purchase of land.

Moreover, it is for the Judge to look at the letter to see whether it professes to be written by an agent, and by the authority of the defendant. It does not purport to be written by the defendant's sanction, or authority, but merely asking Millett whether a lease would be granted, defendant being in possession of ⅔rds, who, as he says, no doubt will accept a lease, and no doubt would pay rent for the past."

In my opinion the letters P 14 and P 15 do not profess to be written by Wills by the authority of the defendant Company. There is nothing to show that the writing of these letters was within the general scope of his authority. In these circumstances the letters cannot be regarded, so far as the defendant Company is concerned, as evidence of an informal lease. Apart from these letters, there is no evidence of such a lease. The plaintiff admits that his sole information of such a lease is derived from the letters.

Can it be said that in these circumstances the defendant Company has established its claim by virtue of prescription? The evidence is somewhat meagre, but I am of opinion that it is sufficient to establish such a claim. The defendant Company purchased the said lands from La Roche in 1912. There is the further Crown Grant in their favour dated July 31, 1914. Mr. Grogan, the present Superintendent, states that he has known the lands in dispute since 1927, and that the defendant Company was then in possession and taking the produce and continued to do so until he himself took charge in 1935. After that time he took the produce up to the date of trial. Moreover he plaintiff himself concedes that the lands were in the possession of the defendant Company, which possession in the absence of evidence cannot be taken as arising from a lease. These facts in my opinion prove 10 years' adverse possession by the defendant Company. The latter have established their claim by virtue of prescription. The judgment of the District Judge must, in these circumstances, be set aside and judgment entered for the defendant Company with costs in this Court and the District Court.

JAYETILEKE J.—I agree.

Appeal allowed.

[1] *4 B & Ad. 339.*